IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8965 of 2003

Between:

M. Kurumanna, S/o. Kistanna,

Aged 43 years, Occ; Sarpanch,

Gram Panchayat, Kondapur Village,

Dhanwada Mandal, Mahaboobnagar Dist.

… Petitioner

And

1. The Hon'ble Junior Civil Judge-cum-Election
   Tribunal at Narayanpet, Mahaboobnagar Dist.
2. Sri D. Narayana, S/o. Masanna, aged 60 years,
   Occ; Retd. Employee, R/o. Kondapur Village,
   Dhanwada Mandal, Mahaboobnagar Dist.
3. The Election Officer, Mandal Development Office,
   Dhanwada.
4. The Revenue Divisional Officer, Narayanpet.
5. The Election Commissioner, Bhudda Bhavan,

M.G. Road, Hyderabad.

6. J. Venkataiah, S/o. Sayanna, aged 47 years,

R/o. Kondapur Village, Dhanwada Mandal.

7. Nakki Pedda Masanna, S/o. Rajanna, aged 39 years,

R/o. Kondapur Village, Dhanwada.

8. Mala Chandra Mouli, S/o. Venkataiah, Aged 29 years,

R/o. Kondapur Village, Dhanwada Mandal.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.8965 OF 2003

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ORDER :

This writ petition is filed seeking a Writ of Certiorari to call for the record relating to the order dated 4-4-2003 in Election O.P.No.1 of 2001 on the file of the Junior Civil Judge-cum-Election Tribunal, Narayanpet, Mahaboobnagar and to quash the same.

The facts of the case, in brief, are as follows:

In the elections held to the office of Sarpanch, Kondapur Gram Panchayat in the month of August, 2001, the writ petitioner was declared elected. Questioning the said election, the 2nd respondent herein filed O.P.No.1 of 2001 on the file of the Junior Civil Judge-cum-Election Tribunal, Narayanpet, Mahaboobnagar, seeking a declaration that the election of the writ petitioner as Sarpanch is illegal and *void abinitio* since he suffered a disqualification under Section 19 (3) of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act'). It was alleged that a third child was born to the writ petitioner on 22-7-1997 i.e., after the Act came into force and therefore he was ineligible to contest the election. It was also alleged that though the said fact was brought to the notice of the Election Officer on 5-8-2001 at the time of scrutiny of the nominations, the Election Officer failed to consider the said objection. He also submitted a representation to the District Collector, Mahaboobnagar on 6-8-2001, however there was no response and the writ petitioner was allowed to participate in the election and he was declared elected having secured highest votes. The 2nd respondent / Election Petitioner who secured 2nd highest votes of 579 claimed that he was entitled to be declared elected since the writ petitioner suffered a disqualification and thus he is not entitled to contest the election. The respondents 6 to 8 herein who also contested the said election were impleaded to the Election Petition as respondents 5 to 7. The writ petitioner / 4th respondent in O.P.No.1 of 2001 filed a counter-affidavit denying the allegation that he was disqualified to contest the election on the ground that he was having three children by 5-8-2001. It was stated that all his children were born before the notified date. The plea of the election petitioner that the third child was born on 22-7-1997 was categorically denied.

On behalf of the official respondents, a common counter-affidavit was filed stating that the election petitioner never brought to their notice that the 4th respondent suffered disqualification. The other allegations made by the election petitioner were denied and it was stated that the election was conducted in a free and fair manner following the procedure prescribed under the statute.

The Election Petitioner got himself examined as P.W.1. That apart, P.Ws.2 to 5 were examined on his behalf and Exs.A-1 to A-8 (a) documents were marked to substantiate his case.

On behalf of the writ petitioner / 4th respondent in O.P. No.1 of 2001, four witnesses were examined, however no documents were produced.

The Tribunal below, on appreciation of the evidence on record both oral and documentary, recorded a finding that the allegation that the third child of the writ petitioner was born after the commencement of the A.P. Panchayat Raj Act, 1994, was probablised. Accordingly, it was concluded that in view of Section 19(3) of the Act he was disqualified and consequently his election to the office of Sarpanch was illegal and void. In the result, O.P.No.1 of 2001 was allowed and the Election Petitioner/2nd respondent herein was declared as the returned candidate. The said order dated 4-4-2003 is under challenge in this writ petition.

I have heard the learned Counsel for the writ petitioner, learned Government Pleader for Panchayat Raj as well as the learned Counsel appearing for the 2nd respondent.

The learned Counsel for the writ petitioner while submitting that the burden of proving the allegations made in the election petition is very heavy on the election petitioner, contended that in the present case the 2nd respondent has miserably failed to establish the alleged disqualification suffered by the writ petitioner. He

submits that there was absolutely no evidence to establish the allegation that the third child was born after the commencement of the Act and therefore the finding recorded by the Tribunal below that the writ petitioner suffered a disqualification is erroneous and unsustainable.

On the other hand, the learned Counsel for the 2nd respondent as well as the learned Government Pleader for Panchayat Raj would submit that the findings of fact recorded by the Tribunal below are based on proper appreciation of the evidence on record and the well-reasoned order of the Tribunal below does not warrant any interference by this Court and therefore the writ petition is liable to be dismissed.

Under Section 19 (3) of A.P. Panchayat Raj Act, 1994, a person having more than two children as on the date of commencement of the Act shall be disqualified for election. However, an exception has been provided under the proviso which says that where the additional child was born within one year from the date of commencement of the Act, such additional child shall not be taken into consideration. It is to be noted that the Act came into force on 21-4-1994. Hence, if the third child was born between 21-4-1994 and 20-04-1995, it cannot be treated as 'disqualification'.

In the case on hand, the specific allegation made in the Election Petition was that the third child was born to the writ petitioner (4th respondent in the Election Petition) on 22-7-1997 i.e., long after the expiry of one year provided under the proviso to Section 19 (3) of the Act. In support of the said plea, the Election Petitioner produced Ex.A-1 Sterilisation Certificate and Ex.A-2 an Extract of Births & Deaths Register. P.W.4 who is the Medical Officer, Primary Health Centre, Dhanwada deposed in his evidence that he performed Tubectomy Operation on Smt. Mahendramma, the wife of the writ petitioner on 4-8-1997 and by that date she was having 21-days-old baby. He also stated that he made necessary entries with regard to the said operation in the Acquittance Register as well as the Family Planning Register. The said entries were marked as Exs.A-7(a) and Ex.A-8(a). The Acquittance Register and Family Planning Registers were marked as Exs.A-7 and

A-8 respectively. P.W.5 who was working as L.D. Clerk at the relevant point of time in the Primary Health Centre, Dhanwada stated that he maintained Ex.A-8 Family Planning Register, which contained the list of operations performed in the Primary Health Centre, Dhanwada and other places, in which the age of the last child of Smt. Mahendramma was mentioned as 21 days. The entries made in Ex.A-7 and Ex.A-8 Registers coupled with the evidence of P.Ws.4 and 5 make it clear that Tubectomy was conducted on Smt. Mahendramma on 04-8-1997 and by that date her third child was 21-days-old. P.W.4 categorically stated in his cross-examination that Tubectomy was conducted after obtaining the consent of Smt. Mahendramma and that the entries were made in Ex.A-8 on the basis of the statement made by Smt. Mahendramma. A sum of Rs.120/- was paid to Smt. Mahendramma as an incentive and the same was acknowledged by her by putting her thumb impression. P.Ws.2 and 3 are the residents of Kondapur village and had personal acquaintance with the family of the writ petitioner. Both the said witnesses consistently stated that the third child of the writ petitioner was born in the year 1997.

The writ petitioner, who got himself examined as R.W.2, in his evidence admitted that he had three children. Though he claimed that all the three children were born before the commencement of the Act, there was absolutely no evidence on his behalf to substantiate the said plea. He failed to produce any documentary evidence in support of his version that all his three children were born prior to the commencement of the Act. It is pertinent to note that even in his counter-affidavit filed in the Election Petition, he did not mention the dates of birth of his children. Though he deposed that all his three children are studying in the School, strangely he did not even produce the extracts of the school records to establish the dates of birth of his children. He also failed to produce any material to contradict the evidence adduced by the election petitioner by producing Exs.A-7 and A-8 Registers as well as by examining P.Ws.4 and 5 to show that his wife, Smt. Mahendramma, underwent Tubectomy on 04-8-1997 and by that date her third child was 21-days-old. In the circumstances, the Election Tribunal relied upon Exs.A-7, A-7(a), A-8 and A-8(a) which are corroborated by the oral testimony of P.Ws.1 to 5 and rightly concluded that the third child of the writ petitioner was born after the commencement of the Act. It is true that Ex.A-1 Sterilisation Certificate was issued on 13-9-2001 after filing of the Election petition. Even if the said document is eschewed from

consideration, there is absolutely no reason to disbelieve Exs.A-7, A-7(a), A-8 and A-8(a) which are public documents. The said documents were established by examining P.Ws.4 and 5, who made the said entries. In the circumstances, I do not see any justifiable reason to interfere with the finding of fact recorded by the Tribunal below.

The law is well settled that in a Writ of Certiorari the scope of judicial review is restricted and normally the interference of the Court is warranted only where the findings recorded by the Tribunal below are not based on any evidence or where the order is vitiated on account of inherent lack of jurisdiction or where the Tribunal has committed a grave error apparent on the face of the record. It is a well settled principle that this Court while judicially reviewing the decision of the Statutory Tribunal will not indulge in re-appreciation of evidence as an Appellate Court and substitute its own opinion for the opinion of the Tribunal below.

As noted above, in the case on hand, the impugned order cannot be said to be vitiated on any of the said grounds. The evidence adduced by the Election Petitioner was undoubtedly sufficient to arrive at a conclusion that the last child of the writ petitioner was born after the commencement of the Act and therefore the Election Petitioner has successfully discharged the burden of proof placed on him.

Even with regard to the contention of the learned Counsel for the petitioner that the Election Petitioner/the 2nd respondent herein cannot be declared elected, I do not find any substance.

On a mere reading of Rules 12, 13 and 15 of A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995, it is clear that when once the Election Tribunal concludes that the election of the returned candidate is vitiated by any of the grounds specified under Rule-12, it should automatically follow under Rule-15 to declare the Election Petitioner who received majority of the valid votes as duly elected. In the case on

hand, there is no dispute about the fact that the Election Petitioner secured second highest votes. Hence, the Tribunal below has rightly declared him elected.

Viewed from any angle, the impugned order cannot be said to be vitiated by any error apparent on the face of the record warranting interference by issuing a Writ of Certiorari as prayed for.

The Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

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25th August, 2005.

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